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SUPREME COURT, U.S.

No. 426

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In the Supreme Court of the United States

October Term, 1951

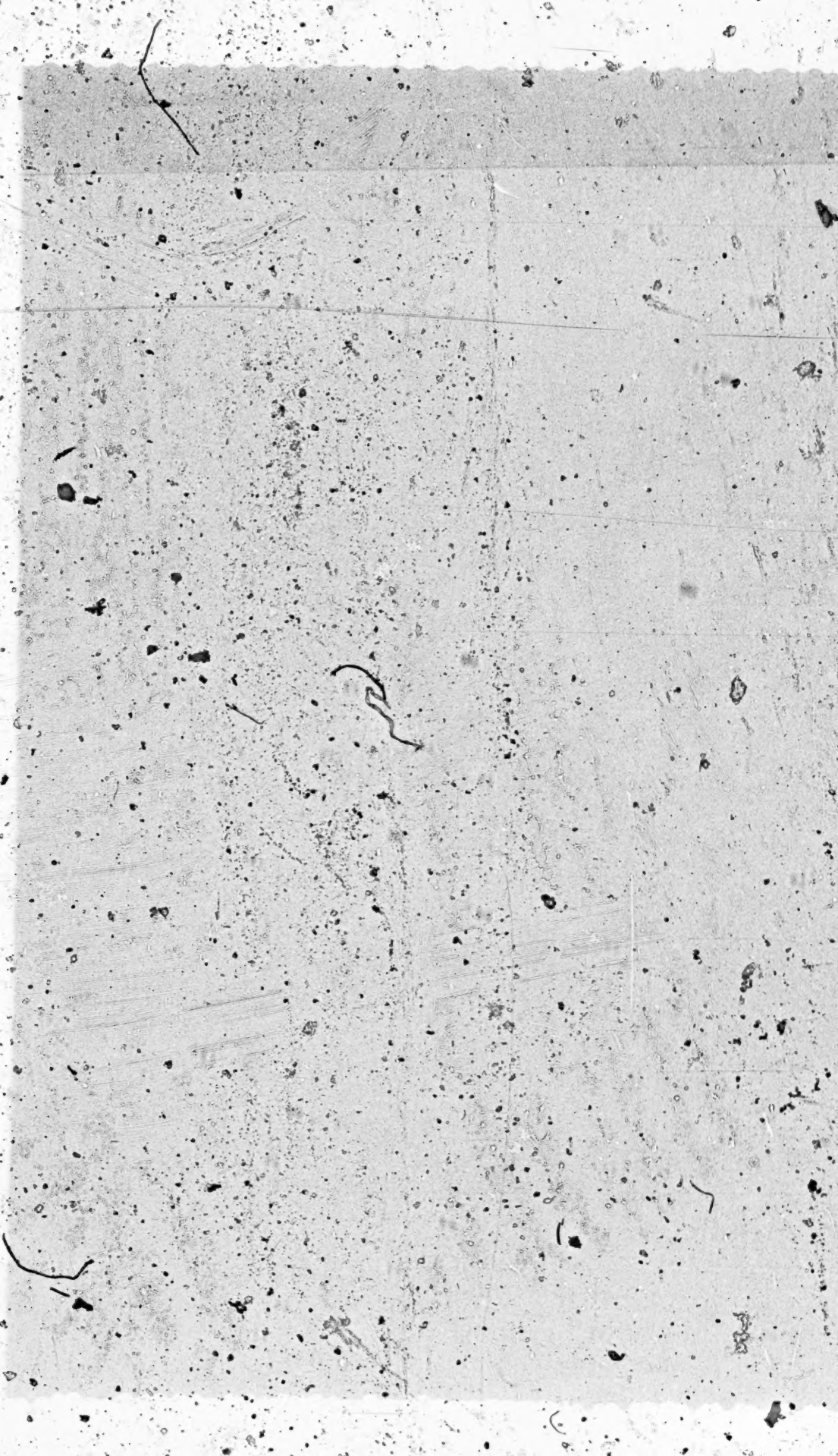
THE UNITED STATES OF AMERICA, APPELLANT

vs.

CHARLES H. BOOL, JR., FRANK P. ALEO, BROOM C. [illegible], ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

STATEMENT AS TO JURISDICTION



IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

No. 2164

UNITED STATES OF AMERICA

v.

CLARENCE E. HOOD, JR., ET AL.

STATEMENT AS TO JURISDICTION

(Filed October 4, 1951)

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, and Rule 37(a) of the Federal Rules of Criminal Procedure, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause dismissing the indictment as to defendants Roy F. Brashier and James H. Wilkinson.

OPINION BELOW

The order of the District Court dismissing the indictment is not reported. A copy of the order, which states the grounds of the dismissal, is attached hereto as an Appendix.

JURISDICTION

The order of the District Court, dismissing the indictment was entered on September 5, 1951. The jurisdiction of the Supreme Court to review on

direct appeal the decision of the District Court dismissing counts of an indictment where such dismissal is based on the construction of the statute on which the indictment is founded is conferred by the Criminal Appeals Act, 18 U.S.C. 3731. See also Rule 37(a)(2), F. R. Crim. P. The following decision sustains the jurisdiction of the Supreme Court: *United States* v. *Lem Hoy*, 330 U. S. 724.

QUESTION PRESENTED

Whether the solicitation and receipt of political contributions in consideration of a promise to obtain appointment to a federal office which at the time of solicitation is non-existent, but the creation of which has been made possible by existing law, constitutes a violation of 18 U.S.C. 215.

STATUTE INVOLVED

Section 215, 18 U.S.C. (62 Stat. 694) provides:

> Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

STATEMENT

On July 19, 1951, an indictment, containing 34 counts was returned against twelve defendants, including Roy F. Brashier and James H. Wilkinson, in the United States District Court for the Southern District of Mississippi. Count one charged all the defendants with a conspiracy to violate 18 U.S.C. 215, by selling, on behalf of the Mississippi

Democratic Committee, appointments to offices in the Post Office Department and the Office of Price Stabilization. The remainder of the counts charged the defendants, singularly, with the commission of specific substantive offenses. Counts 31 and 32 charged that on February 8, 1951, Brashier had committed two such substantive offenses, and count 33 charged that Wilkinson committed one such offense on February 5, 1951, in that they, severally, "did knowingly, wilfully and unlawfully solicit from" different individuals named stated sums of money "in consideration of the defendant's promise of support and use of influence in obtaining for" the named individuals "an appointive office and place under the United States, namely, an appointment as Chairman of the County Ration Board to be set up and created under the Office of Price Stabilization in" certain specified counties in Mississippi.

Following a motion by all the defendants, the trial court, on September 5 1951, after "taking judicial notice that no office or place of Chairman of the County Ration Board under the Office of Price Stabilization for the District of Mississippi had been created or was in existence during the period of time covered by the indictment," ordered "the indictment dismissed as to the defendant Roy F. Brashier on Counts 31 and 32; and * * * as to defendant James H. Wilkinson on Count 33 of said indictment." All portions of Count 1 (conspiracy count) of the indictment dealing with offices or places as Chairman or Supervisor of County Ration Boards under the Office of Price Stabilization and the overt acts thereunder dealing with such

offices or places were ordered to be stricken as surplusage.

THE QUESTION IS SUBSTANTIAL

The District Court, in dismissing the indictment as to Brashier and Wilkinson, ruled, in effect, that Congress did not intend 18 U.S.C. 215 to be so broad in scope as to cover the sale of potential federal jobs. Thus, the issue presented by this appeal is important in the enforcement of the laws designed to prevent corruption of the federal service. In enacting emergency legislation Congress usually provides for the creation of a temporary central agency and the establishment of various offices thereunder, in order to effectuate the legislative purpose. The number and type of offices to be established is usually made contingent upon the predictability of certain events. Under the decision of the District Court the Government would be powerless to punish the sale of federal offices authorized by law, but not yet actually put into existence.

The broad language of 18 U.S.C. 215 seems to cover the sale of potential jobs involved in the instant case. It prescribes the sale of "*any* appointive office or place under the United States." (Italics supplied.) The fact that an office has not yet been created is not the determinative factor in the scope of the statute. If money is paid to obtain

[1] Compare the provisions of 18 U.S.C. 600, which makes it a misdemeanor for anyone to promise "any employment, position, work, compensation, or other benefit, *provided for or made possible in whole or in part* by any Act of Congress" for political activity during an election. (Italics supplied.) We feel that the italicized portion refers to an established office or employment, or one reasonably expected in the near future.

an office which all parties have reason to believe will be established in the near future, such a transaction would seem clearly to violate the intent of the statute. The evil sought to be avoided by Section 215 was corruption in federal service by having appointments given, not to an individual most qualified, but to one with greater financial influence.[2] The statutory purpose clearly makes the statute just as applicable to promises to obtain federal offices which have not yet been created but the existence of which has been made possible by an Act of Congress, as to offices actually in existence.

The offenses covered by the section here involved are analogous to offenses of false personation prohibited by 18 U.S.C. 912, under which the offense is complete when one obtains a thing of value while pretending to act as an officer of the United States, even though there is no office established by law to which pretense is made. *United States* v. *Barnow*, 239 U. S. 74, 77; *Elliott* v. *Hudspeth*, 110 F. 2d 289 (C. A. 10); *Brassfield* v. *United States*, 259 Fed. 511 (C. A. 6); compare *Ehlert* v. *United States*, 167 F. 2d 380 (C. A. 1). False pretense of federal authority with an intent to defraud tends to detract from the respect and dignity of the Government

[2] The purpose of the bill was at the time of its enactment stated to be as follows:

"This bill seeks to punish the purchase and sale of public offices. Certain Members of Congress have brought to the attention of the House both by speeches on the floor and statements before the Judiciary Committee a grave situation, disclosing corruption in connection with postal appointments in Mississippi and South Carolina. It is believed that this bill will prevent corrupt practices in connection with appointments in the near future." (H.R. No. 1366, 69th Cong., 1st sess.)

and its officers generally. *United States* v. *Barnow*, supra, at 78. Similarly, the promise to procure a non-existent, but a reasonably possible office tends to corrupt the federal service and lower its esteem in the eyes of the public. The sale of a potential federal office has a direct relation to the general well being of the federal service which Congress has the power to regulate. Cf. *United States* v. *Ferger*, 250 U. S. 199, 203.

In enacting the Defense Production Act of 1950 (64 Stat. 798, *et seq.*, 50 U.S.C. App. 2061, *et seq.*) Congress unquestionably gave the President authority to establish, among other things, a system of rationing. The preamble to the Act stated that it was designed "To establish a system of priorities and allocations for materials and facilities, authorize the requisitioning thereof, provide financial assistance for expansion of productive capacity and supply, provide for price and wage stabilization, provide for the settlement of labor disputes, strengthen the controls over credit, and by these measures facilitate the production of goods for the national security, and for other purposes." In accordance with the authority granted him, the President had established the Office of Price Stabilization, and named its national director. Rationing could be established when need therefor arose and the prior experience during World War II would lend credence to the expectation that it would be handled by county boards. Thus the corruption charged in the instant indictment related to potential federal positions authorized by Act of Congress.

The respect and confidence which underlies the federal service would clearly be undermined by an unrestrained practice of selling federal jobs which are not actually in existence, but the establishment of which is within the reasonable expectation of the public. It is submitted that the decision of the District Court is erroneous and that the question presented by this appeal is a substantial one which should be settled by the Supreme Court.

Respectfully submitted,

(S.) PHILIP B. PERLMAN,
Solicitor General.

(S.) JOSEPH E. BROWN,
United States Attorney,
Southern District of Mississippi.

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